1947.

File No. B. Ante Trust/47

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Legal DEPARTMENT

B BRANCH

Subject:—

P.F. Feb 7/15

A Bill to supplement existing Laws against restraints and monopolies and for other purposes.

P.3/E

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Ltd. Sectt. Slip 24 B e.

613-B.

C O N T E N T S.

Legal Department File No. B Ante Trust/47.

Or. No.	Compilation No.	Subject.	Pages.
1.	U.N. to R.C.D. No. C437 dt. 19th Aug 1947.	Opinion regarding the possibility of enacting the legislation on the lines of the provision contained in the Clayton Act.	1 - 4.

BM/10.9.

Office of the R.L.A.

The proposed legislation on the lines of the Clayton Act, 1914, is no doubt expedient. Most of the provisions of the Act are competent for the Provincial Legislature to enact. It would be competent for the Provincial Legislature to provide, as in section 2 of the Clyton Act, that it would be unlawful for a person engaged in commerce to discriminate in price between different purchasers of commodities sold for use, consumption or resale, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce. It would also be competent for the Provincial Legislature to legislate, as in section 3 of the Clyton Act, making it unlawful for a person engaged in commerce to lease or sell commodities or to fix a price therefor on the condition that the lessee or purchaser shall not deal in the commodities of a competitor where the effect of the lease or sale may be substantially to lessen competition or tend to create a monopoly. There is also no objection to make a provision, as in section 7 of the Clyton Act, that no corporation engaged in commerce shall acquire the whole or any part of the stock or its other share capital of another corporation engaged also in commerce where the effect of such acquisition may be substantially to lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition or to restrain any such commerce in any section or community or tend to create a monopoly of any line of commerce. It would also be possible to provide in the Bill the various penal and other provisions necessary for enforcing the obligations and liabilities contained in the Bill. There is no objection also to providing as that the courts trying offences under the Bill shall be aided by technical assessors. All these provisions will be intra vires.

2. Section 8 of the Clyton Act however provides inter alia that no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, either of which has deposits, capital, surplus and undivided profits aggregating more than a certain specified amount, and that no private banker or person who is a director in any bank, etc., having deposits, etc., aggregating more than the same amount, shall be eligible to be a director in any other bank and that no bank, banking association or trust company

trust company in any city or town of more than 200,000 inhabitants shall have as a ~~director~~ director or other officer or employee any private banker or any director or other officer or employee of any other bank, etc., located in the same place. This provision in law would be hit by entry 33 in the Federal List, which relates to "incorporation and regulation of trading corporations, including banking", and entry 38 in ~~k~~ the same list, which is "banking, that is to say, the conduct of banking business by corporation". The provision will not fall under entry 27 of the Provincial List. The provision, therefore, would be ultra vires. It would not be possible to include such a provision in the proposed legislation.

3. Section 297 of the Government of India Act provides inter alia that no Provincial Legislature shall, by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, have power to pass any law prohibiting or restricting the entry into, or export from, the Province of goods of any class or description. Probably it would not be necessary to include a provision in the proposed legislation prohibiting or restricting entry into, or export from, the Province of any goods. If such a provision is considered necessary for the effective enforcement of the proposed measure, it would not be a feasible to make the same as it would be ultra vires of the Provincial Legislature.

4. It will be for the administrative department to consider from the administrative point of view what provisions would be necessary; and subject to the remarks contained in para 2 above regarding the provisions in section 8, it would be feasible to legislate on the lines of the provisions contained in the Clayton Act.

Sd/- D.V.Vyas.

Parliamentary Secretary of Legal Affairs.

U.O. to N.C.D.No. 6437, dated the 19th August 1947.

SUT/10.5.